



Facilitate Open Science Training for European Research





Creative Commons: A Legal Overview



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Creative Commons

Introduction to Creative Commons

- Creative Commons, USA, 2002
- Standardized tools
 - grant permission to their copyright material

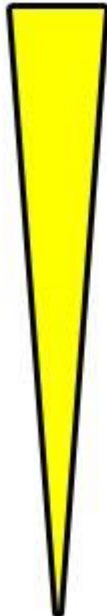
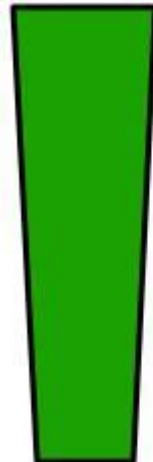


LICENSES

TERMS



MOST OPEN



LEAST OPEN



CC0



BY



BY



SA



BY



ND



BY



NC



BY



NC



SA



BY



NC



ND

display, perform and remix
your name as requested by you

Share Alike Works

contribute, display or perform
your work

work only under a license
you have chosen for your work

Non-Commercial

display, perform or remix
for commercial purposes only.

Creative Commons

Three "layers" of licenses

The licenses exist in three formats:

- *readable by machines*
- *readable by humans* (Commons Deed)
- *readable by lawyers* (Legal Code)



Creative Commons

Few words about Creative Commons

- *'work alongside copyright'*
 - *'some rights reserved'*



Creative Commons

Enforceability

Curry v. Audax Case no. 334492 / KG 06-176 SR,

- **Dutch Court**

- JUSTICIABILITY → Creative Commons as a *cause of action*

From 2006 till now



never been found *unenforceable*

Creative Commons

Ported vs unported : What does it mean? What are the problems of ported licenses?

One of CC's goals is ensuring that all of its legal tools work globally:

Older Versions

- integration
- translation

4.0 Version

- *no* integration
- translation

Creative Commons

Contracts

More binding

Licenses

Permissions

Academia: contract law perspective

Jacobsen v. Katzer, 535 F.3d 1373 (Fed.Cir. Aug 13, 2008):

District court

Only Contract law should be applied

Court of Appeal

Copyright law can be applicable too

Unilateral Contracts

Offer

Made to the whole world

Acceptance

By performance



Creative Commons

Creative Commons in the Cypriot Jurisdiction

- **Chapter 149**

Articles 2(2)(b), 7, 8

Offer

By applying the Creative Commons Legal Tools to the material

Acceptance

By starting acting within the scope of the license

Creative Commons

Consideration

- no royalties
- *Jacobsen v Katzer:*

“there should be recognized economic motives inherent in public licenses, even when profit is not immediate”



Creative Commons

Irrevocability

Is applied to *already licensed material*:

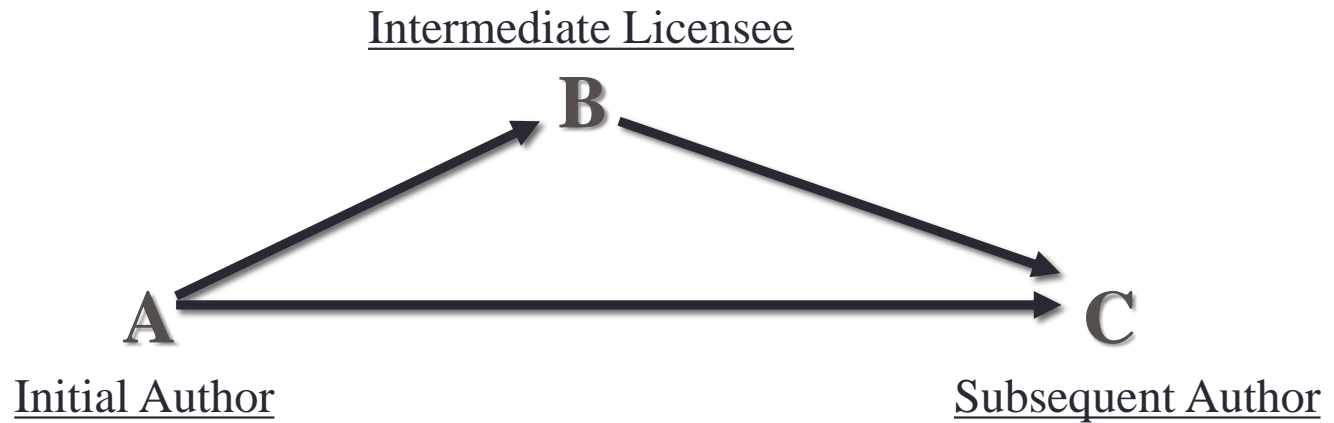
- *no termination* of existent contracts by *revocation*
- licensees will
 - *always* use the licensed material
 - *under the same terms* which granted them accessibility in the first place



Creative Commons

Privity

- Share Alike
- Derivatives



Creative Commons

Section 5 – Disclaimer of Warranties and Limitation of Liability.

1. Unless otherwise separately undertaken by the Licensor, to the extent possible, the Licensor offers the Licensed Material **as-is** and as-available, and ***makes no representations or warranties*** of any kind concerning the Licensed Material, whether express, implied, statutory, or other. This includes, without limitation, warranties of ***title, merchantability, fitness for a particular purpose, non-infringement, absence of latent or other defects, accuracy, or the presence or absence of errors, whether or not known or discoverable***. Where disclaimers of warranties are not allowed in full or in part, this disclaimer may not apply to You.
2. To the extent possible, ***in no event will the Licensor be liable*** to You on any legal theory (including, without limitation, negligence) or otherwise for any direct, special, indirect, incidental, consequential, punitive, exemplary, or other losses, costs, expenses, or damages arising out of this Public License or use of the Licensed Material, even if the Licensor has been advised of the possibility of such losses, costs, expenses, or damages. Where a limitation of liability is not allowed in full or in part, this limitation may not apply to You.
3. The disclaimer of warranties and limitation of liability provided above shall be interpreted in a manner that, to the extent possible, most closely approximates an absolute disclaimer and waiver of all liability.



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Exclusion Clauses in Consumers Contracts

- Are licensees considered consumers in law?
(directive 93/13/ec, Act 93(I)/1996)
- **Directive 93/13/ec, art. 3(1):**

An exclusion clause is unfair if:

- *Not individually negotiated*
- *Causes significant imbalance*
- *To the detriment of the consumer*



Creative Commons

Moral rights

Art. 7(4) Act 59/1976, art. 6bis Berne Convention

- the *attribution* right

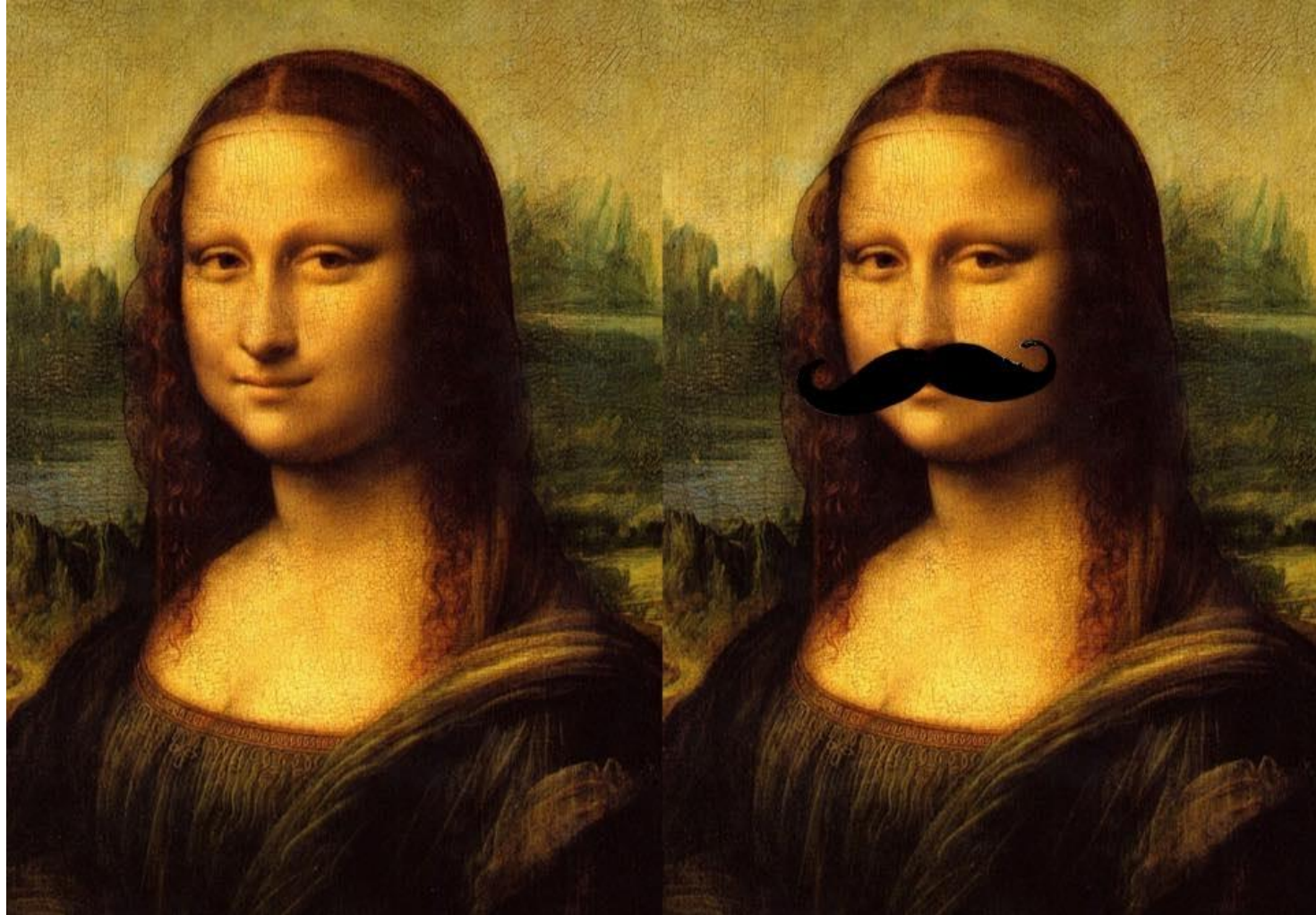


- **Waivable**
(Canada, United Kingdom, United States)

- the *integrity* right

- **Inalienable**
(France, Germany, Italy, Greece)

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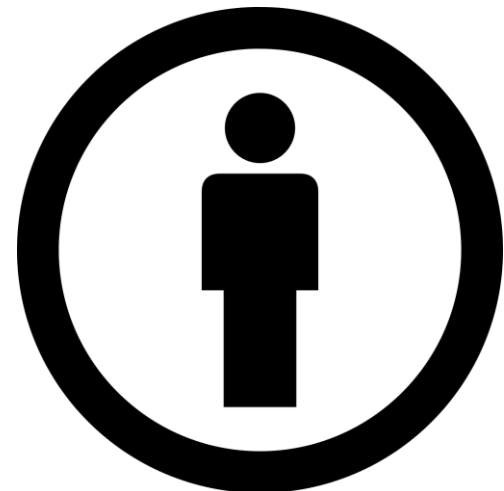
Attribution Right – (Name Reference)

The right of the author to *claim authorship* over his creation

- *Mandatory* to mention the name of the author
 - USA: *Non Attribution*

- Creative Commons Guidelines:

https://wiki.creativecommons.org/wiki/Best_practices_for_attribution



Creative Commons

Integrity right

The right of the author to protect his honor or reputation

- Violation of the spirit or essence of the project
- Affect the original author's honor or reputation



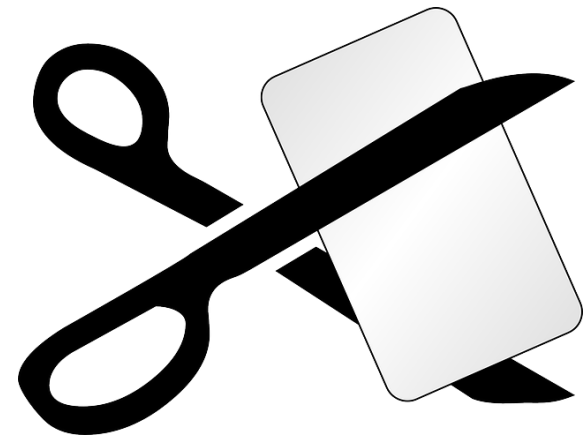
The creator keeps the power to maintain the integrity of his work.



Creative Commons

Integrity Right Protection Example

- Picture A
 - Modification by cut
 - Possible integrity right violation





FOSTER

Thank you for your time!

